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From: Scott Brandt-Erichsen

To: 'Ketchikan Charter Commission' ; 'Dan Bockhorst' ; 'Steve Schweppe'

Sent: Monday, August 02, 2004 3:00 PM

Subject: proposed amendments 8/6 comments

You indicated that Glen requested comments on his draft amendments. I have a number of comments on Glen's draft. They are as follows:

Agenda item I- 1-

A "use" tax is a term of art generally referring to a charge on the use of personal property where the property was purchased outside the jurisdiction. For example, if we had a sales and use tax in equal amounts, a person purchasing a washing machine within the Borough would pay sales tax, and a person buying a washing machine in Seattle and having it shipped up would pay a use tax when it enters the jurisdiction. See McQuillin, Municipal Corporations, section 44.194.

The concept of a fee based on the location of a business is difficult to justify without relation to the service. Generally, a fee is distinguished from a tax in that a fee is charged in connection with a service being provided, and thus is not charged where there is no service. A tax is charged without relation to the service, and goes into a common fund which may be used for items not directly related to the property on which the tax is levied. Simply calling a fee a "use tax" will not be sufficient to make it so. The analysis depends upon the use of the funds and the relationship between that use and the property.

The proposed change to the remainder of the section is not needed. The broad legislative power allows the Assembly to do anything not prohibited. Thus, the Assembly has the power to do the things listed even if the charter is silent. The only limitation on the taxing would be the vote for an increase in sales tax rate.

Agenda item I-2a

While the proposed language could be adopted, It would not apply to taxes required to pay bonds. I also would argue that it is poor public policy as it can have the effect of making the maximum into the minimum (i.e. the Assembly would need to always levy the maximum to guard against unforeseen costs and the inability to raise revenue to meet unknown future demands if it lowers the tax for just a one year period). Also, if services are moved from service areas to areawide, but the areawide levy authority is not increased, then other services

would need to be cut to meet the funding limits. Further, if the Assembly has no ability to raise the tax amount, there is no method to respond to demands for service or changes in public funding sources. Any strict limits on property tax make the accurate division of existing sales taxes at the time of the petition even more critical because the new Assembly would have limited tools to correct for any errors or inaccurate estimates.

Agenda item I-2b

While there may be arguments about the validity of a supermajority requirement, I do not believe that it is clearly prohibited by current law in Alaska.

Agenda item I-3a

The narrative does not make sense in a couple of ways. First, the statement that service area funds must be used only in a service area, while true, does not factually relate to the public works and public safety sales taxes. For example, If 50% of the “public works” sales tax is revised in the petition to be an areawide sales tax to support the facilities associated with those functions which are becoming areawide, then it is not a “service area tax”. As such the .75% sales tax which would remain in the service area would be limited to being expended for service area purposes and the .75% sales tax which would be areawide would be available for areawide costs.

Second, the commentary appears to assume that the future assembly could easily make an adjustment in the future. Any increase in the sales tax rate areawide would require areawide approval, and would not automatically reduce the service area sales tax rate. If the intention is to reduce the service area rate in conjunction with increasing the areawide rate, that would need to be done with the petition, or if done later would be by dependent ballot propositions. If the power to provide the service is transferred with the petition, but the funding is delayed 3 years and is contingent on a public vote, an easily predictable result is that reserves would be run down for a couple years then property tax would be increased. At the same time, the revenue accruing to the service area for service it used to provide but now does not (because they are areawide) would build into a surplus and subsidize other services in the service area. While this is a benefit to the service area residents, it is a burden on those outside the service area.

Agenda item I-3b

This item makes sense if the .25% figure is an appropriate number.

Agenda item I-4

This item makes sense if the .75% figure is an appropriate number.